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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

DEMOREA REED

Defendant and Appellant.

A125514

(Alameda County Super. Ct.  
No. 159482)

In this case, defendant entered a plea of no contest to a violation of Penal Code section 288, subdivision (a),<sup>1</sup> (lewd act with a child under the age of 14), and admitted one prior felony conviction pursuant to section 667.5, subdivision (b). He was sentenced on the felony offense to the middle term of six years in state prison plus one year consecutive for the prison term prior, for a total of seven years in state prison. The remainder of the counts in the complaint were dismissed. His appellate counsel has raised no issues and asks this court for an independent review of the record to determine whether there are any issues that would, if resolved favorably to defendant, result in reversal or modification of the judgment. (*People v. Kelly* (2006) 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436.) Defendant was notified of his right to file a supplemental brief, but has not done so. Upon independent review of the record, we conclude that no arguable issues are presented for review, and affirm the judgment.

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<sup>1</sup> All subsequent statutory references are to the Penal Code.

## STATEMENT OF FACTS AND PROCEDURAL HISTORY

A 12-year-old girl met defendant at a shopping mall and two months later ran away from home to be with the defendant. The girl told him she was 16 years old and that her name was “Tia.” After meeting her at a BART station in Oakland, the girl and defendant spent the day drinking alcohol and smoking marijuana. That night the couple engaged in consensual sex. Defendant advised the girl that she needed to earn money if she wanted to continue living with him. He told her that she should engage in acts of prostitution. On the night of April 15, 2008, the girl engaged in two separate sex acts for \$50 each time, and she gave the money to defendant. That same night and the next day defendant had additional sex with the minor. Also on April 16, 2008, defendant heard that the minor was missing. He took her to a Burger King restaurant. When the minor went to use the rest room, defendant left the establishment and the girl called her mother for help.

A complaint was filed May 8, 2008. In counts one and four to seven, defendant was charged with lewd acts upon a child under the age of 14 (§ 288, subd. (a)), in count two with pandering (§ 266i, subd. (a)(2)) and in count three with pimping a child under the age of 16 (§ 266h, subd. (b)(2)). It was also alleged that defendant suffered a prior prison term under section 667.5, subdivision (b).

On September 22, 2008, defendant pleaded no contest to one count of section 288, subdivision (a) and admitted one prison term prior pursuant to section 667.5, subdivision (b). The judge advised defendant of his rights pursuant to *Boykin-Tahl*.<sup>2</sup> Additionally, a written plea form was filled out by defendant and signed by his counsel. The defendant acknowledged in the written plea form that he fully understood the rights he was giving up and that the plea was offered “freely and voluntarily and of [his] own accord.” The attorney for defendant affirmed the fact the plea was knowingly, intelligently and voluntarily done.

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<sup>2</sup> *Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122.

On November 20, 2008, defendant's *Marsden*<sup>3</sup> motion was heard and denied. On December 8, 2008, he filed his motion to withdraw the no contest plea on the grounds he did not understand the proceedings and he was not obtaining his medication at the time of the plea. On the same day, after reviewing the file and plea transcript, the court denied the motion to withdraw the no contest plea. Defendant was sentenced to prison in accordance with his plea agreement.

Defendant filed a notice of appeal on March 10, 2009, and the trial court issued the certificate of probable cause (§ 1237.5) on July 15, 2009.

### ANALYSIS

This court has reviewed the several transcripts and other records in this case. The court finds that defendant was properly admonished at the time he waived his preliminary examination and entered his no contest plea. He answered each question presented by the magistrate directly and without any difficulty. There is no suggestion he was behaving inappropriately or without his full faculties. He made no request for additional time due to medical needs. He acknowledged the plea was voluntary and knowing, and advised the court he was not forced to enter the plea. His attorney agreed the plea was free and voluntary, and his attorney had represented appellant in at least one other case two years before this prosecution. There is no evidence defendant acted without full control of his faculties; he did not evidence a need for additional medication.

The *Marsden* motion was heard by a different judge on November 20, 2008. A review of the sealed transcript by this court supports the denial of the motion by Judge Cartwright.

In *People v. Jones* (1995) 10 Cal.4th 1102, 1105, the court held that once a guilty plea appeal is operative as to any noncertificate issues, it is valid as to all noncertificate issues. This court has found no basis for setting aside the no contest plea after a review of the record on appeal. There were no errors in the sentencing that took place.

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<sup>3</sup> *People v. Marsden* (1970) 2 Cal.3d 118.

Defendant was properly represented by competent counsel at all stages of the case.

Defendant acknowledged a factual basis for the no contest plea.

After a full review of the record, we find no arguable issues and, therefore, affirm the judgment.

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Dondero, J.

We concur:

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Marchiano, P. J.

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Margulies, J.